

BARRY E. HINKLE, Bar No. 071223  
TRACY L. MAINGUY, Bar No. 176928  
CONCEPCIÓN E. LOZANO-BATISTA, Bar No. 227227  
WEINBERG, ROGER & ROSENFELD  
A Professional Corporation  
1001 Marina Village Parkway, Suite 200  
Alameda, California 94501  
Telephone (510) 337-1001  
Fax (510) 337-1023  
E-Mail: bhinkle@unioncounsel.net  
tmainguy@unioncounsel.net  
clozano@unioncounsel.net

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES, in their  
capacities as Trustees of the LABORERS  
HEALTH AND WELFARE TRUST FUND  
FOR NORTHERN CALIFORNIA;  
LABORERS VACATION-HOLIDAY TRUST  
FUND FOR NORTHERN CALIFORNIA;  
LABORERS PENSION TRUST FUND FOR  
NORTHERN CALIFORNIA; and LABORERS  
TRAINING AND RETRAINING TRUST  
FUND FOR NORTHERN CALIFORNIA,

Plaintiffs,

v.

TKDEMO AND CONCRETE CUTTING,  
INC., a California Corporation; TKDEMO  
AND CONCRETE CUTTING, INC., a  
California Corporation doing business as T K  
ENGINEERING; TKDEMO AND  
CONCRETE CUTTING, INC., a California  
Corporation doing business as T K DEMO  
AND CONCRETE CUTTING, INC. doing  
business as T K ENGINEERING; and  
TIMOTHY BRIAN KRUSE, individually,

Defendants.

No. C 15-01366 WHO

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR ENTRY OF DEFAULT  
JUDGMENT BY COURT**

Date: November 18, 2015  
Time: 2:00 p.m.  
Dept.: Courtroom 2, 17th Floor  
Judge: Hon. William H. Orrick

1 This matter was set for hearing for entry of Judgment by Default against Defendants  
 2 TKDEMO AND CONCRETE CUTTING, INC.; TKDEMO AND CONCRETE CUTTING, INC.  
 3 doing business as T K ENGINEERING; TKDEMO AND CONCRETE CUTTING, INC. doing  
 4 business as T K DEMO AND CONCRETE CUTTING, INC. doing business as T K  
 5 ENGINEERING (collectively referred to as “TKDEMO AND CONCRETE CUTTING, INC.”)  
 6 and Defendant TIMOTHY BRIAN KRUSE on November 18, 2015 at 2:00 p.m. in Courtroom 2,  
 7 17th Floor, 450 Golden Gate Avenue, San Francisco, California. Plaintiffs are The Board of  
 8 Trustees, in their capacities as Trustees of LABORERS HEALTH AND WELFARE TRUST  
 9 FUND FOR NORTHERN CALIFORNIA; LABORERS VACATION-HOLIDAY TRUST  
 10 FUND FOR NORTHERN CALIFORNIA; LABORERS PENSION TRUST FUND FOR  
 11 NORTHERN CALIFORNIA; AND LABORERS TRAINING AND RETRAINING TRUST  
 12 FUND FOR NORTHERN CALIFORNIA (hereinafter “Trust Funds” or “Plaintiffs”). Having  
 13 considered the pleadings and arguments in this matter, the hearing set for November 18, 2015 is  
 14 VACATED, and good cause appearing, this Court **FINDS AS FOLLOWS:**

- 15 1. The Complaint was filed with this Court on March 24, 2015:
- 16 2. The Complaint was served on Defendants, and each of them, on April 1, 2015, for  
 17 which proofs of service were filed before this Court with the Summons on April 13, 2015;
- 18 3. No answer or other responsive pleadings having been filed within the time  
 19 permitted by law and default was entered against the Defendants on April 29, 2015;
- 20 4. On June 21, 1990, TIMOTHY BRIAN KRUSE executed a Memorandum of  
 21 Agreement on behalf of Kruse Construction (hereinafter “Memorandum Agreement”) with the  
 22 Union, which incorporated by reference the AGC/ Laborers Master Agreement. TIMOTHY  
 23 BRIAN KRUSE incorporated TIM KRUSE CONSTRUCTION, INC. after executing the  
 24 Memorandum Agreement and assumed its terms adhering to its terms, including making  
 25 contributions to the Trust for work performed by employees of TIM KRUSE CONSTRUCTION,  
 26 INC. The Master Agreement by its terms incorporates the various Trust Agreements establishing  
 27 each of the Trust Funds. Hereinafter, the Master Agreement, Memorandum Agreement, and  
 28 Trust Agreements are referred to collectively as the “Agreements.” Pursuant to the Agreements,

1 TIM KRUSE CONSTRUCTION, INC. is required to contribute and pay to Plaintiffs the hourly  
 2 amounts required by said Agreements for each hour paid for or worked by any of its employees  
 3 who performed any work covered by said Agreements, and that it would be subject to and bound  
 4 by all of the terms, provisions and conditions of the Trust Agreements as incorporated by the  
 5 terms of the Master Agreement.

6 5. TIM KRUSE CONSTRUCTION, INC. failed to pay contributions in the amount  
 7 of \$39,279.80 that were revealed as owed to the Trust Funds for work performed by its  
 8 employees during the time period of February 2009 through June 2012, and related liquidated  
 9 damages and interest. TIM KRUSE CONSTRUCTION, INC. also timely failed to pay  
 10 contributions owed based upon work performed by its employees between August 2010 and  
 11 December 2011 for which it owes the Trust Funds entitled to \$4,132.61 in liquidated damages and  
 12 interest. Furthermore, TIM KRUSE CONSTRUCTION, INC. failed to pay the Trust Funds  
 13 unpaid contributions of \$126,547.76 and interest and liquidated damages of \$14,000.55 for the  
 14 period of January 2012 through April 2013. The Trust Funds filed a Complaint in this Court in  
 15 Case Number CV-12-05322 JSW seeking collection of such sum and its attorneys' fees and costs.  
 16 This Court entered a judgment in favor of the Trust Funds and against TIM KRUSE  
 17 CONSTRUCTION, INC. in the amount of \$212,183.47 on October 2, 2013 (hereinafter  
 18 "Judgment"). TIM KRUSE CONSTRUCTION, INC. also failed to pay contributions in the  
 19 amount of \$6,913.62 for the month of May of 2013 which were reported to the Trust Funds as  
 20 owed, but not paid. This amount was not included in the Judgment.

21 6. TIM KRUSE CONSTRUCTION, INC. did not satisfy the Judgment. On  
 22 November 26, 2013, TIMOTHY BRIAN KRUSE incorporated TKDEMO AND CONCRETE  
 23 CUTTING, INC. in order to evade the obligations under the collective bargaining agreement.  
 24 The Trust Funds levied against TIM KRUSE CONSTRUCTION, INC.'s bank account and  
 25 obtained a payment toward the judgment in the amount of \$25,239.30. The Trust Funds also  
 26 levied a writ of execution on Tricorp, a contractor for whom TIM KRUSE CONSTRUCTION,  
 27 INC. performed work as a subcontractor and thus owed moneys to TIM KRUSE  
 28

1 CONSTRUCTION, INC. The Trust Funds obtained payments from such levy toward the  
2 judgment in the total amount of \$36,030.00.

3 7. TKDEMO AND CONCRETE CUTTING and TIM KRUSE CONSTRUCTION,  
4 INC., operate the same type of business, i.e., a contracting business at the same location and both  
5 use the same mailing address. TIM KRUSE CONSTRUCTION, INC. and TKDEMO AND  
6 CONCRETE CUTTING, INC. perform the same services and labor for the same clients in the  
7 same geographic area, and work orders not completed by TIM KRUSE CONSTRUCTION, INC.  
8 prior to its termination were completed by TKDEMO AND CONCRETE CUTTING, INC.  
9 TIMOTHY BRIAN KRUSE was the RMO/CEO/ Owner of TIM KRUSE CONSTRUCTION,  
10 INC. and he is the RMO/CEO/ Owner of TKDEMO AND CONCRETE CUTTING, INC.  
11 Substantially all of TKDEMO AND CONCRETE CUTTING, INC.'s equipment and machinery  
12 is the same equipment and machinery used by TIM KRUSE CONSTRUCTION, INC., and  
13 TKDEMO AND CONCRETE CUTTING, INC. did not pay TIM KRUSE CONSTRUCTION,  
14 INC. fair market value for the acquisition and use of this equipment and machinery. The sole  
15 person with control over Defendants' bank accounts, TIMOTHY BRIAN KRUSE, is the same  
16 person who controlled TIM KRUSE CONSTRUCTION, INC.'S bank accounts. TKDEMO AND  
17 CONCRETE CUTTING, INC. was incorporated immediately after judgment was entered against  
18 TIM KRUSE CONSTRUCTION, INC. TKDEMO AND CONCRETE CUTTING, INC. took  
19 over the operations of TIM KRUSE CONSTRUCTION, INC. after TIM KRUSE  
20 CONSTRUCTION, INC.'s California Contractor's license was suspended for failure to pay the  
21 Judgment. Accordingly, The Trust Funds have shown that two firms have the same common  
22 ownership, management, operations, and labor relations. Additionally, Plaintiffs have also  
23 established that TKDEMO AND CONCRETE, INC. is used in a sham effort to avoid collective  
24 bargaining obligations.

25 8. After TIMOTHY BRIAN KRUSE filed a Chapter 13 Bankruptcy petition, he  
26 began conducting business under the name TKDEMO AND CONCRETE CUTTING using TIM  
27 KRUSE CONSTRUCTION, INC.' equipment to finish contracts bid by TIM KRUSE  
28 CONSTRUCTION, INC. without satisfying the judgment debt owed to the Trust Funds and

without regard to the Trust Funds' lien rights in both his personal and real property. He operates his new business out of the real property owned by TIM KRUSE CONSTRUCTION, INC. paying the mortgage personally or from the income of the TKDEMO AND CONCRETE CUTTING, INC. since he concedes that TIM KRUSE CONSTRUCTION, INC. is out of business. His actions within the bankruptcy Court, including scheduling TIM KRUSE CONSTRUCTION, INC.'s assets as his own free of the Trust Funds' secured claim and not revealing his interest in TKDEMO AND CONCRETE CUTTING, INC. in his initial bankruptcy schedules, evidence his fraudulent intention to retain the property of TIM KRUSE CONSTRUCTION, INC. for his own benefit and depletion at the expense of the Trust Funds. Moreover, TIM BRIAN KRUSE admits that he incorporated TKDEMO AND CONCRETE CUTTING, INC. because his license was suspended for nonpayment of the Judgment obtained by the Trust Funds and he wanted to continue to conduct the same business but could not do so under the name of TIM KRUSE CONSTRUCTION, INC. Accordingly, the Trust Funds have shown that the TIMOTHY BRIAN KRUSE as shareholder misused the corporate form of TIM KRUSE CONSTRUCTION, INC. to perpetrate the fraud of continuing to operate as a contractor as TKDEMO AND CONCRETE CUTTING, INC. using and depleting the corporate assets of TIM KRUSE CONSTRUCTION, INC. as if they were his own without paying the debts of the TIM KRUSE CONSTRUCTION, INC. TIMOTHY BRIAN KRUSE's Chapter 13 Bankruptcy was dismissed on March 19, 2015 for failure to make plan payments and unreasonable delay that is prejudicial to creditors.


9. Defendants, and each of them, have been an employers within the meaning of section 3(5) and section 515 of ERISA (29 U.S.C. §§ 1002(5), 1145) and an employer in an industry affecting commerce within the meaning of section 301 of the LMRA (29 U.S.C. § 185).

10. That Defendants, and each of them, failed to pay delinquent contributions in the amount of \$98,537.59 based upon work performed by TIM KRUSE CONSTRUCTION, INC.'s employees and owes Plaintiffs liquidated damages and interest in the total amount of \$89,767.13 related to such unpaid contributions and contributions paid by TIM KRUSE CONSTRUCTION, INC., but paid late.

1           11. That Defendants, and each of them, owe Plaintiffs' attorneys' fees in the total  
2 amount of \$114,058.50 and costs in the amount of \$12,634.86, relating to the collection of the  
3 contributions owed to the Trust Funds in this lawsuit, United States District Court for the  
4 Northern District Case No. C-12-05322 JSW and Eastern District of California Bankruptcy Case  
5 No. 14-22472-B-13J.

6           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT** judgment be  
7 entered in favor of Plaintiffs and against Defendants, and each of them. A separate judgment will  
8 issue.

9  
10 DATED: November 12, 2015

  
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HONORABLE WILLIAM H. ORRICK  
UNITED STATES DISTRICT COURT  
MAGISTRATE JUDGE

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